

REMARKS

Claims 1-21, 23-26, and 28-32 are pending in this application. Claims 19-21, 23-26 and 28-32 are allowed. Claims 1, 9-10 and 18 are amended. All issues raised in the Office Action mailed November 9, 2009 are addressed hereinafter.

I. ISSUES NOT RELATING TO PRIOR ART; CLAIMS 1-18 -- 35 U.S.C. § 112

The Office Action rejected Claims 1-18 under 35 U.S.C. § 112, second paragraph, as allegedly omitting an essential step. (Office Action: page 2). The Office Action alleges that the omitted step should recite how a forwarding node recognizes that it is adjacent to the tunnel end point and knows when to remove the header. Applicants disagree. The claims recite what the applicants consider to be the invention, and the technical disclosure explains how to implement the claimed approach. The disclosure as a whole may present multiple implementations and there is no legal reason to restrict the claims to any one approach. Further, in this case and many past cases the USPTO has completely misinterpreted the limited case law relating to “omitted essential elements,” which solely involves elements or steps that a disclosure explicitly characterizes as essential, which is not the case with the present disclosure.

Solely to advance prosecution, claim 1 and other independent claims recite “recognizing, based on routing protocol information, a tunneled packet comprising an address directly identifying a neighbor node to the forwarding node as the tunnel end point...” Support for the amendment is provided at least in paragraph [33] of the applicants’ specification, in which the disclosure states that the forwarding node can recognize that it is adjacent to a tunnel end point and that it has a packet for the end point using information normally carried by routing protocols. Optionally, signaling may be used to notify the forwarding node which node is a tunnel end point. A forwarding node may dispense with the signaling as long as the forwarding node can identify the tunnel end point from the information which is normally carried by the routing protocols.

Reconsideration and withdrawal of the rejection is respectfully requested.

CLAIMS 9-10 AND 18

Present Claims 9-10 and 18 also recite the feature of recognizing, without any information other than that which is normally carried by the routing protocols, a tunnel endpoint and a packet directed to the tunnel end point. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

DEPENDENT CLAIMS

The claims that are not discussed above depend directly or indirectly on the claims that have been discussed. Therefore, those claims are patentable for the reasons given above. In addition, each of the dependent claims separately introduces features that independently render the claim patentable. However, due to the fundamental differences already identified, and to expedite positive resolution of the examination, separate arguments are not provided for each of the dependent claims at this time.

II. CONCLUSION

All of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If any applicable fee is missing or insufficient, the Commissioner is authorized throughout the pendency of this application to charge any applicable fee to our Deposit Account No. 50-1302.

Respectfully submitted,

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